

83-263

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ALEXANDER L. STEVAS,
CLERK

No.

SUPREME COURT OF THE UNITED STATES

October Term, 1983

RE: IN THE MATTER OF NORMAN E. FOGLE,
PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

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Counsel for Petitioner

August 10, 1983

QUESTIONS PRESENTED

I.

Whether disability of an attorney to continue to perform his or her duties as a state prosecutor because of the physical and psychological pressures of that office is per se sufficient to justify suspension of the attorney's license to practice law.

II.

Whether suspension of an attorney's license to practice law solely because the attorney is disabled from performing the duties of a state prosecutor denies to that attorney the equal protection of the law or due process of law.

III.

Whether suspension of an attorney's license to practice law solely because he or she is disabled from acting as a state prosecutor denies to the attorney due process of law when such attorney is denied the notice and hearing provided by

the state for all other attorneys as a prerequisite to license suspension or cancellation.

IV.

Whether the disability of an attorney to function efficiently as a state prosecuting attorney is so closely related to the ability to engage in the private practice of law that it can reasonably constitute the sole ground for suspension of the license to practice law.

V.

Whether it is a denial of equal protection of the law for a state to suspend a state prosecutor's license to practice law for the sole reason that he is disabled from performing the duties of a prosecutor when such suspension action was not taken with respect to the only other person previously retired under the same retirement system for reasons of disability, viz. a State judge.

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The petitioner Norman E. Fogle respectfully prays that a Writ of Certiorari issue to review the order of the Supreme Court of South Carolina entered in this proceeding on May 19, 1983.

OPINION BELOW

In the matter of Norman E. Fogle, respondent, _____ S.C. _____, 303 S.E.2d 90.

JURISDICTION

The order of the Supreme Court of South Carolina was entered on May 5, 1983. A timely petition for rehearing was denied on May 19, 1983 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution which provides in part as follows: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner was a state prosecuting attorney (Solicitor) for the First Judicial Circuit of South Carolina from January, 1973, until his retirement for reasons of disability on April 7, 1983. He was admitted to the Bar of the State of South Carolina in 1962, and is admitted to practice in the District Court of South Carolina, the Fourth Circuit Court of Appeals, and is a member of this Court.

Solicitors and judges in South Carolina are members of the Retirement System for Judges and Solicitors, Section

9-8-10 et sequentia, Code of Laws of South Carolina 1976, which provides in part:

Section 9-8-60. (3) No member shall be permitted to retire and resign on account of being totally and permanently disabled and to receive the retirement benefit herein provided for until it is proven to the satisfaction of the Supreme Court, or a majority of the justices thereof, that the member is totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service in the position. (Emphasis added).

In May, 1982, the petitioner applied to the Supreme Court of South Carolina for retirement on grounds of total and permanent disability to continue further useful and efficient service as a Solicitor. Solicitors in South Carolina are required to supervise the criminal dockets in the counties of their circuits and to be in attendance upon all criminal courts in such counties above the police court level.

In support of such application, the petitioner submitted to the Court medical evidence that he was suffering from urological problems and depression, the latter arising out of stress from his duties as a solicitor. An evaluation done by the Medical University of South Carolina upon order of the State Supreme Court reported similar findings. There was nothing in any report before the Court, medical or other, to indicate incompetence as an attorney, mental illness or inability to reason soundly.

Based on such reports, the Supreme Court of South Carolina on April 7, 1983, granted the petitioner's application for disability retirement on the ground that "Solicitor Norman E. Fogle is totally and permanently disabled from further rendering useful and efficient service in his position as Solicitor". Appendix 12.

On the same day, the Court issued an order and a rule to show cause temporarily

suspending the petitioner's license to practice law and requiring that he show cause why his license should not be suspended indefinitely. Appendix 14.

After hearing on the Rule, and without considering additional evidence, the Court issued its order suspending indefinitely the petitioner's license to practice law. Appendix 19. Timely petition for rehearing was denied. Appendix 23.

REASON FOR GRANTING THE WRIT

I.

THE DECISION BELOW RAISES
SERIOUS QUESTIONS FOR
FEDERAL AND STATE
PROSECUTORS THROUGHOUT THE
NATION WITH RESPECT TO THEIR
SUBSTANTIAL PROPERTY RIGHTS
IN THE EVENT OF THEIR
RETIREMENT ON DISABILITY.

The action by the State court in
suspending the petitioner's license to
practice law solely on the ground that he
was disabled from continuing as one of the
State's sixteen prosecuting attorneys is a
significant precedent that could influence
other states to follow suit. The possible
consequences of the decision are serious
because they involve a substantial
property right of a potentially great
number of persons throughout the United

States.

The Federal Government and most states provide for retirement of federal and state prosecuting attorneys for reasons of disability after varying minimum periods of service. The question of whether or not such retirement will per se constitute a valid ground for the cancellation or suspension by a state of the retiree's license to practice law is one with which such retirees and the supreme courts or other licensing authorities of the states will be faced with increasing frequency.

II.

THE DECISION BELOW RAISES
QUESTIONS FOR THE FEDERAL
COURTS WITH RESPECT TO THEIR
EXERCISE OF COMITY IN
ADMITTING OR CONTINUING THE
ADMISSION OF PROSECUTING
ATTORNEYS RETIRED FOR
REASONS OF DISABILITY.

If, as can be inferred from the decision below, an attorney is no longer capable of engaging in the private practice of law solely because he or she is disabled from carrying out efficiently the duties of a public prosecutor, the Federal Courts at all levels are faced with the question of whether such courts in their exercise of comity should admit such persons to practice in those courts or should continue the privilege of those already admitted. Without guidance from this Court, a myriad of conflicting decisions reasonably can be expected.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and order of the Supreme Court of South Carolina indefinitely suspending

the license of the petitioner to practice law.

Respectfully submitted,

JOSEPH C. COLEMAN
Counsel of Record for
Petitioner
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Columbia, SC 29201

NORMAN E. FOGLE
2190 Riley Street
Orangeburg, SC 29115
Counsel for Petitioner

August 10, 1983

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THE SUPREME COURT OF SOUTH CAROLINA

RE: The Honorable Norman E. Fogle,
Solicitor, First Judicial
Circuit

O R D E R

Pursuant to South Carolina Code § 9-8-10, et seq. (1976), the application for disability retirement of Solicitor Norman E. Fogle has been forwarded to the Court for consideration.

After a hearing and a review of the medical reports submitted, it is the opinion of the Court that Solicitor Norman E. Fogle is totally and permanently disabled from further rendering useful and efficient service in his position as Solicitor.

Let a copy of this Order, certified by the Clerk of Court, be served upon the Director of the Retirement System for Judges and Solicitors of the State of South Carolina.

<u>s/ J. Woodrow Lewis</u>	<u>C.J.</u>
<u>s/ Bruce Littlejohn</u>	<u>A.J.</u>
<u>s/ J. B. Ness</u>	<u>A.J.</u>
<u>s/ George T. Gregory, Jr.</u>	<u>A.J.</u>
<u>s/ David W. Harwell</u>	<u>A.J.</u>

Columbia, South Carolina

April 7, 1983

CERTIFIED TRUE COPY
/s/ Frances H. Smith
Clerk, S.C. Supreme Court

THE SUPREME COURT OF SOUTH CAROLINA

RE: The Honorable Norman E. Fogle,
Solicitor, First Judicial
Circuit

ORDER AND RULE TO SHOW CAUSE

Pursuant to the attached Order of this Court, dated this day, finding you totally and permanently disabled from further rendering useful and efficient service in your position as Solicitor for the First Judicial Circuit, you are hereby required to show cause before this Court in the Supreme Court, 1231 Gervais Street, Columbia, South Carolina on May 2, 1983, at 2:30 p.m., or as soon thereafter as this matter can be heard, why you should not be indefinitely suspended from the practice of law in this State.

Further, you are hereby temporarily suspended from the practice of law pending the above referenced hearing.

Let a copy of this Order, certified by
the Clerk of this Court, be forthwith
served on Norman E. Fogle, Solicitor,
First Judicial Circuit.

s/ J. Woodrow Lewis C.J.
FOR THE COURT

Columbia, South Carolina

April 7, 1983.

CERTIFIED TRUE COPY
/s/ Frances H. Smith
Clerk, S. C. Supreme Court

THE SUPREME COURT OF SOUTH CAROLINA

RE: Norman E. Fogle, Solicitor,
First Judicial Circuit,
Retired,
Respondent.

RETURN

The Respondent would show to the Court that:

1. Although he is totally and permanently disabled from rendering further useful and efficient service in his former position as solicitor, he is not disabled from the efficient private practice of law.
2. The Respondent is physically and mentally capable of exercising the professional judgement and discretion as a practicing attorney necessary for the protection of others or their property or interest in property.
3. The indefinite suspension of the Respondent's right to practice law based

upon a finding that the Respondent is disabled from rendering useful and efficient service as a solicitor would deny to him the equal protection of the laws guaranteed by the constitutions of the United States and the State.

4. The indefinite suspension of the Respondent's right to practice law based upon the finding set forth in paragraph (3.) would deny to him due process of law in that he would have been denied the rights afforded to others pursuant to the disciplinary procedure set forth in the Disciplinary Procedure Rule of this Court.

Wherefore, the Respondent prays that this Court reinstate his right to practice law, or, in the event the Court does not afford to him such relief, the he be afforded an opportunity through the Court's Rule on Disciplinary Procedure to establish that he is physically and

mentally capable of rendering efficient
service to the public as a private
practitioner.

Respectfully Submitted,

s/ Joseph C. Coleman
Joseph C. Coleman
1338 Main Street
1010 Barringer Bldg.
Columbia, S. C. 29201

Attorney for Respondent.

Columbia, S.C.

May 2, 1983.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RE: IN THE MATTER OF NORMAN E. FOGLE,
RESPONDENT.

ORDER

Solicitor Norman L. Fogle sought retirement pursuant to South Carolina Code § 9-8-10, et seq. (1976). Based upon medical reports submitted thereunder, this Court by Order dated April 7, 1983, found him totally and permanently disabled from rendering useful and efficient service in his position as Solicitor.

Under the facts presented, that conclusion dictates that this Court indefinitely suspend Norman E. Fogle from the practice of law. He shall forthwith deliver to the Clerk of the Supreme Court, within five days, his certificate admitting him to practice law in this State.

And it is so ordered.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

Columbia, South Carolina

May 5, 1983

CERTIFIED TRUE COPY

/s/ Reba D. Mims

Deputy Clerk, S. C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RE: IN THE MATTER OF NORMAN E. FOGLE,
RESPONDENT.

PETITION FOR REHEARING

The Respondent respectfully petitions the Court for a rehearing of this matter upon the following grounds:

If the Court has the inherent power to suspend the Respondent's license to practice law in toto, it also has the inherent power to take less restrictive action with respect to the license, i. e. to limit the Respondent in his practice of law.

And limiting the Respondent's right to practice law in a fashion commensurate with the findings of the Court with respect to physical and emotional disability would be more appropriate than the total suspension of his license.

s/ Joseph C. Coleman
Joseph C. Coleman
1338 Main Street
Columbia, S. C. 29201

Attorney for the Respondent

Columbia, S. C.

May 9, 1983

THE SUPREME COURT OF SOUTH CAROLINA
RE: In the Matter of Norman E. Fogle

ORDER

Norman E. Fogle seeks a rehearing from the Order of this Court dated May 4, 1983, indefinitely suspending him from the practice of law.

He sought retirement from his position as Solicitor based on certain physical, mental and emotional problems which the Court deemed sufficient to warrant retirement and to prevent him from properly performing the office of an attorney. On that basis his retirement was approved and his license to practice law indefinitely suspended.

The petition for rehearing is denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

Columbia, South Carolina

May 19, 1983

OCT 31 1983

ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-263

RE: IN THE MATTER OF NORMAN E. FOGLE,
Petitioner

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

RESPONDENT'S BRIEF IN OPPOSITION

T. TRAVIS MEDLOCK
Attorney General

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Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

No. 83-263

RE: IN THE MATTER OF NORMAN E. FOGLE,
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Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

QUESTION INVOLVED

I.

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate any conflict of decisions or the existence of an important federal question?

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-263

RE: IN THE MATTER OF NORMAN E. FOGLE,
Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the South Carolina Supreme Court is reported at ___ S.C. ___, 303 S.E.2d 90 (1983). The opinion delivered in the court below as well as prior orders of the court in this matter are fully set out in the Appendix to the Petition.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

STATE PROVISIONS INVOLVED

In addition to the provisions set forth in the Petition, pertinent portions of the Rule on Disciplinary Procedure of the South Carolina Supreme Court are set out in the Respondent's Appendix at 1a.

QUESTION INVOLVED

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate any conflict of decisions or the existence of an important federal question?

STATEMENT OF THE CASE

The Petitioner is a licensed attorney in South Carolina, having been admitted to the bar in 1962. From January, 1973, until April 7, 1983, Petitioner served as the duly elected state prosecuting attorney (Solicitor) for the First Judicial Circuit, composed

of Calhoun, Dorchester and Orangeburg Counties. On June 17, 1982, Petitioner submitted an Application for Disability Retirement to the South Carolina Supreme Court under the provisions of Section 9-8-10, et seq., of the South Carolina Code of Laws (1976), as amended by Act 150 of 1979, which provides a retirement system for judges and solicitors. In support of his application, Petitioner submitted medical reports from three physicians indicating that Petitioner suffered from persistent chronic prostatitis, chronic urinary tract infection, and psychiatric distress due to his prostatitis and urinary tract problems as well as the heavy mental stress of his position as Solicitor. The doctors were of the opinion that Petitioner was permanently and totally disabled from a physical and mental

standpoint and should be permitted to retire.

On July 15, 1982, the South Carolina Supreme Court appointed a medical panel of physicians from the Medical University of South Carolina to examine Petitioner and to determine if he was totally and permanently disabled (Appendix at 8a). On August 2, 1982, the Panel submitted its Report to the Court finding that Petitioner suffered from chronic prostatitis of a debilitating nature, chronic glomerulonephritis, and chronic anxiety and depression. The Panel was of the opinion that Petitioner was totally, although not necessarily permanently, disabled. Since Section 9-8-60 (3) of the South Carolina Code of Laws (1976), as amended, required that the member must be both totally and permanently disabled, Petitioner requested and was

granted an extension of time to submit additional medical evidence and reports to the medical panel. On January 31, 1983, a majority of the Panel rendered a supplemental report finding Petitioner totally and permanently disabled.

On March 21, 1983, a hearing was held before the Supreme Court of South Carolina to receive oral arguments on the issue of whether Petitioner was totally and permanently disabled. On April 7, 1983, the Court issued its Order finding Petitioner totally and permanently disabled from rendering useful and efficient service in his position as Solicitor (Petitioner's Appendix at 12).

On the same day, the Court issued an Order and Rule to Show Cause to Petitioner as to why he should not be

indefinitely suspended from the practice of law (Petitioner's Appendix at 14-15). This Order was issued pursuant to Section 19 of the South Carolina Supreme Court's Rule on Disciplinary Procedure (Appendix at 1a), which provides that an attorney who has been judicially declared mentally or physically incompetent or incapacitated shall be transferred for an indefinite period to the disability inactive status. The Petitioner did not submit any further evidence or a brief to the Court, and, after hearing arguments from Petitioner on May 2, 1983, the Court issued its Order, dated May 5, 1983, indefinitely suspending Petitioner from the practice of law (Petitioner's Appendix at 19-20). On May 9, 1983, the Petitioner filed a Petition requesting a rehearing before

the South Carolina Supreme Court on the ground that the Court should merely place limitations on Respondent's practice of law rather than suspending him (Petitioner's Appendix at 21-22). On May 19, 1983, the Court denied the Petition for Rehearing (Petitioner's Appendix at 23-24).

ARGUMENT

I.

Petitioner has failed to demonstrate any reason why the Court should grant review on certiorari.

A. No Conflict in Decisions.

It is noteworthy that the Petition fails to cite any case which conflicts with the decision below. Clearly, Petitioner does not come within Rule 17.1(a) or (b) of the United States Supreme Court Rules as an appropriate reason to grant certiorari.

B. Lack of Important Federal Questions.

Petitioner has failed to comply with Rule 21.1 (h) of the United States Supreme Court Rules in that he has failed in his Statement of the Case to specify: the stage of the proceeding at which federal questions sought to be reviewed were raised; the method or manner of raising them; and the way in which they were passed upon by the court below. A cursory review of the Lower Court's Opinion reveals, moreover, that the court below did not pass upon any federal questions.

The Petitioner seeks review by this Court of a state law decision by attaching the constitutional labels of "equal protection" and "due process of law" to some of the questions presented in his Petition. However, Petitioner

fails to adequately explain, much less to establish, how important federal questions are presented in this case.

The action taken by the South Carolina Supreme Court was pursuant to that Court's Rule on Disciplinary Procedure. Section 19A (Appendix at 1a) provides that where an attorney has been judicially declared incompetent or physically disabled, the Court, upon proper proof of the fact, shall enter an Order transferring the attorney indefinitely to the disability inactive status. If there has been no judicial declaration, then the Court may direct the examination of the attorney by medical experts, and if, after due consideration, the Court concludes that the attorney is incapacitated, the Court shall then transfer him to the inactive status. The procedure of Rule 19 was

fully complied with in the proceeding below.

Questions I and IV of the Petition present no federal question but rather merely raise matters of state law. This Court has long recognized that the right to control the practice of law in the state courts is vested in the states. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 21 L.Ed.442 (1873); Ex Parte Lockwood, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929 (1894). State courts have broad powers to establish standards for licensing practitioners and regulating the practice of the profession. Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975). Petitioner in his Questions I and IV, merely challenges the factual determination of the South Carolina Supreme Court that he was physically

and mentally incapacitated under the standards it imposes for the practice of law in South Carolina. This Court is without jurisdiction to review these state law questions under 28 U.S.C. § 1257 (3).

In Questions II, III and V, the Petitioner attempts to raise equal protection and due process issues. The record amply establishes that Petitioner was afforded the same procedures provided to all attorneys in cases involving mental or physical disability under Section 19 of the Rule on Disciplinary Procedure. The South Carolina Supreme Court had before it the medical reports submitted by the Petitioner and by the medical panel appointed by the Court in the prior retirement proceeding. Petitioner never challenged any of these medical

opinions. With this information before it, the Court could properly determine if these disabilities also rendered Petitioner incapable of practicing law. Petitioner was afforded by the Court's Order and Rule to Show Cause dated April 7, 1983, with both notice and a hearing on the issue of his mental and physical incapacity to practice law. Petitioner did not submit any new or additional evidence for the Court's consideration. It is obvious that Petitioner raises the federal issues merely in an attempt to obtain the jurisdiction of this Court to review the State Court's decision. It is noteworthy that none of the so-called "federal questions" were raised by Petitioner in his request for rehearing before the State Court (Petitioner's Appendix at 21-22). It would seem that if Petitioner deemed these questions

important, then they should have been properly presented, briefed, and argued below so that the State Court could possibly construe its rule to avoid or obviate the federal constitutional challenges. Petitioner's failure to do so, not only demonstrates that the questions are not important or substantial, but also that this record is not an appropriate vehicle to address the State's authority in regulating the practice of law before the State courts.

CONCLUSION

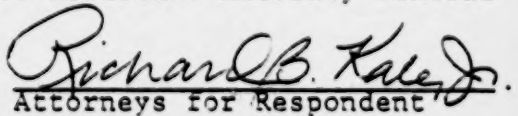
For the above-stated reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

RICHARD B. KALE, JR.
Senior Assistant Attorney General

BY:


Attorneys for Respondent

APPENDIX

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RULE ON DISCIPLINARY PROCEDURE

19. PROCEEDINGS WHERE AN ATTORNEY IS
DECLARED TO BE MENTALLY OR
PHYSICALLY INCOMPETENT OR IS
ALLOWED TO BE INCAPACITATED

A. Where an attorney has been judicially declared incompetent or is involuntarily committed on the grounds of mental incompetency or physical disability, the Court, upon proper proof of the fact, shall enter an Order transferring the attorney to disability inactive status effective immediately and for an indefinite period until the further Order of the Court. A copy of the Order shall be served upon the attorney, his guardian, and/or the director of the institution to which he has been committed in the manner as the Court may direct.

B. Whenever the Board or Executive Committee through the Chairman shall petition this Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by qualified medical experts as the Court shall designate. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an Order transferring him to disability inactive status on the grounds of the disability for an indefinite period and until the further Order of the Court. Any pending

disciplinary proceedings against the attorney shall be held in abeyance.

The Court shall provide for such notice to the Respondent of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the Respondent if he is without adequate representation.

C. If, during the course of a disciplinary proceeding, the Respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the Respondent to adequately defend himself, the Court thereupon shall enter an Order immediately transferring the Respondent to disability inactive status until a determination is made of the Respondent's capacity to continue to practice law in a proceeding instituted

in accordance with paragraph 19B of this Rule.

If the Court shall determine that the Respondent is not incapacitated from practicing law, it shall take action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the Respondent.

D. The Board shall cause a notice of transfer to disability inactive status to be published in the "Transcript" or similar Bar publication and the Board shall similarly cause notice of reinstatement to be published.

E. The Board shall promptly transmit a certified copy of the Order of transfer to disability inactive status to the chief judge of the judicial circuit in which the disabled attorney maintained his practice and shall request action under the provision

of paragraph 33 of this Rule as may be indicated in order to protect the interests of the disabled attorney and his clients.

F. No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by Order of this Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a year. The petition shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon the application, the Court may take or direct action as it deems necessary or proper to a determination of whether the

attorney's disability has been removed, including a direction for an examination of the attorney by qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of the examination be paid by the attorney.

G. If an attorney has been transferred to disability inactive status by an Order in accordance with paragraph C above, and thereafter in proceedings duly taken, he has been judicially declared to be competent, this Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon terms as are deemed proper and advisable.

H. The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status or any other petition or

motion based upon a mental or medical condition shall constitute consent to divulge his medical records. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to disability inactive status and he shall furnish to this Court written consent to each to divulge such information and records as requested by Court appointed medical experts.

THE SUPREME COURT OF SOUTH CAROLINA

RE: THE HONORABLE NORMAN E. FOGLE
SOLICITOR FOR THE FIRST JUDICIAL CIRCUIT

O R D E R

The Court being of the view that The Honorable Norman E. Fogle, Solicitor of the First Judicial Circuit, should submit to an examination prior to a determination as to whether or not he is totally and permanently disabled from rendering further useful and efficient service as a Solicitor,

IT IS, THEREFORE, ORDERED, that: Dr. William Turner, Dr. Arthur Williams, and Dr. Thomas Steele, all of the Medical University of South Carolina, be

and they are hereby, appointed as a panel for the purpose of such examination and reporting their findings to this Court no later than August 15, 1982. Dr. Gilbert Bradham, Vice President for Clinical Affairs, is hereby designated as Chairman of this panel.

IT IS THE FURTHER ORDER of this Court that Solicitor Fogle contact the Chairman of the panel at the Medical University of South Carolina, Charleston, South Carolina, to arrange to submit to such examination or examinations as directed by the Chairman and the members of the panel of physicians as hereinabove appointed.

AND IT IS SO ORDERED.

J. Woodrow Lewis, C.J.
FOR THE COURT

Columbia, South Carolina
July 15, 1982.